



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,952	01/25/2002	James W. McCaherty	8350.0763-00	6974

58982 7590 11/21/2008  
CATERPILLAR/FINNEGAN, HENDERSON, L.L.P.  
901 New York Avenue, NW  
WASHINGTON, DC 20001-4413

EXAMINER

FISHER, MICHAEL J

ART UNIT

PAPER NUMBER

3689

MAIL DATE

DELIVERY MODE

11/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/054,952

**Applicant(s)**

MCCAHERTY, JAMES W.

**Examiner**

MICHAEL J. FISHER

**Art Unit**

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 3/9/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-14, 16-29 and 31-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-29 and 31-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13,15-29,31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PAT 4,605,081 to Helmly in view of US PAT 7,136,787 to Schlessinger et al. (Schlessinger).

As to claims 1,15,17,33, Helmly discloses a computerized (fig 1) method for analyzing compliance with payload standard comprising a module for determining a first target payload (160, as best seen in fig 5), obtaining weight data for equipment (158, as best seen in fig 5), a module for comparing the two and analyzing compliance (168, 166, as best seen in fig 5) and a module for outputting the results (fig 4). Helmly does not, however, teach calculating a modified target payload weight based on the analysis.

It would have been obvious to use the data for analyzing and modifying the first payload and a second payload as Helmly teaches the system as being used to comply with government regulations (abstract, lines 4-8) and if a load is above legal limits the company would be in danger of legal action taken against it.

Helmly teaches a method and system as discussed above. Helmly does not, however, teach using statistical analysis, such as standard deviation, to refine the data.

Schlessinger teaches using standard deviation for statistical analysis (col 17, lines 38-40, claim 36, claim 53), therefore, it would be obvious to use standard deviation and statistical methods as taught by Schlessinger to refine the data of Helmly to ensure accuracy of computations to ensure compliance with the law on all payloads.

As to claim 40, it would be done periodically (whenever it needed to be done). The loading practice would be modified based on the target payload (the amount dispensed). Helmly in view of Schlessinger does not, however, teach computing weights greater or less than compliant weight. It would have been obvious to know which weights are greater or lesser than the target weight so the loads would be at the target weight.

As to claims 2,18, Helmly discloses analyzing compliance (168, 166, as best seen in fig 5), analyzing compliance with a second payload standard (length of truck, 164, as best seen in fig 5) not equal to the first (weight).

As to claims 3,19, the target payload is based on type of payload (abstract, lines 8-13), it is inherent that different payloads would have different legal limits.

As to claims 4,5,20,21, Helmly discloses obtaining the empty weight (col 2, lines 20-22), as Helmly discloses it as being used more than once, it would inherently be done for two or more pieces of equipment of the equipment type (tractor-trailer). Helmly does not, however, teach averaging the weights of multiple equipments (fleet or not). It would have been obvious to one of ordinary skill in the art to average the weights of multiple trucks for statistical purposes such as determining an average for all trucks of the same type.

As to claims 6,22 it would be inherent that a target payload is that which is added to the empty weight to achieve target payload, therefore, it would have been obvious to do this subtraction to determine the proper load.

As to claims 7,23, as there is only one piece of equipment the mean would be the same as the payload value of the truck, so this would inherently be calculated, the standard deviation would be zero, as there is no deviation as there is only one truck weighed, the distribution of payloads would be the value of the one payload, these values, while not expressly discussed, would inherently be calculated as they are the values determined in the steps.

As to claims 8,10,26, applicant has shown the percentage of acceptable overload to be old and well known in the art (paragraphs 2-6, starting on pg 1 of the specification of the instant application), as such, it would have been obvious to one of ordinary skill in the art to determine the percentages as the applicant has shown that this is well known. Compliance would have been checked using this standard.

As to claims 9,24, Helmly would have determined this if the payload weights were above the maximum threshold.

As to claims 11,27, Helmly discloses providing a compliance rating based on the comparison ("...within allowable weight", col 7, lines 43-51).

As to claims 12,28 Helmly determines the payload on a predetermined factor (maximum allowable weight).

As to claims 13,29 Helmly discloses graphically illustrating the results (fig 4).

As to claim 31, standard statistical analyses are not considered to be patentably distinct. As there is no step using the information, it would not be considered patentably distinct. Further, as there could only be one truck, the standard deviation would be 0 (zero) and thus, the offset would be zero and the final payload weight data would be unchanged.

As to claims 16,32, Helmly discloses determining equipment identification (col 5, lines 17-28).

As to claim 25, it would have been obvious to one of ordinary skill in the art to use the lesser of these values to ensure that the truck is compliant.

As to claims 34, 35, there is a network connection (fig 1).

As to claim 36, the output module is connected to a device to send data over a network (fig 1).

As to claim 37, there is shown to be a payload database (inherent in that the system is shown to have payload weight information, col 2, lines 4-10), a processor (fig 1), an equipment database (inherent in that there is shown to be information stored on

the equipment) with payload standard information (what type of payload the vehicle can carry).

As to claim 38, it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void the warranty.

As to claim 39, it would have been obvious to have a standard and to determine the numbers as this would quantify the results.

As to claim 41, it would have been obvious to one of ordinary skill in the art to look at a trucks performance to schedule maintenance as maintenance is also based on regulatory requirements that include miles and hours.

### ***Response to Arguments***

Applicant's arguments filed 9/3/08 have been fully considered but they are not persuasive. As to arguments that the prior art does not teach statistical evaluation of the numbers, this method, as shown in the Schlessinger patent, is old and well known and therefore, would have been obvious to use to ensure compliance to the law and further, it would be obvious to use the system to determine a second load to ensure that all loads comply with the law.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Fisher whose telephone number is 571-272-6804. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Fisher/  
Examiner, Art Unit 3689

MF

10/09/08



**Application Number****Application/Control No.**

10/054,952

**Applicant(s)/Patent under  
Reexamination**

MCCAHERTY, JAMES W.

**Examiner**

MICHAEL J. FISHER

**Art Unit**

3689